IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/07/2004

CORAM

THE HON'BLE MR. JUSTICE V. KANAGARAJ
and
THE HON'BLE MR. JUSTICE S. ASHOK KUMAR

Habeas Corpus Petition No.439 of 2004

R.Kasiammal .. Petitioner

-Vs-

1. State, rep. by its
Secretary to Government,
Prohibition & Excise
Department,
For St. George,
Chennai - 9.

2. The District Magistrate,
and District Collector,
Villupuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr. Abudu Kumar Rajarathinam
Government Advocate (Crl. side)
:O R D E R

(Order of the Court was delivered by S.ASHOK KUMAR,J.)
The wife of the detenu is the petitioner herein and he has come forward to file the above petition praying to issue a Writ of Habeas Corpus, calling for the records relating to the order in C2/53962/2003 dated 20.10.2003 passed by the second respondent herein, quash the same as illegal and further direct the respondents to produce the body of the detenu viz.,Raja S/o Velu who is now confined in the Central Prison, Cuddalore, before this Court and set him at liberty forthwith.

2. The detenu has been detained on the ground that she was a Bootlegger under the relevant provisions of Tamil Nadu Act 14 of 1982.

3. Heard Mr. Abudu Kumar Rajarathinam, learned government advocate

on the criminal side with no representation made on the part of the petitioner.

4. On a perusal of the records, it comes to be known that the second respondent has passed the order of detention as against the detenu branding him as a Boot-Legger on account of the threat caused by him to the public order. It further comes to be known that already 3 cases have been registered as adverse cases against the detenu, of which, one is a case under Section 4(1)(a)4(1)(aaa) R/w Section 4(1-A)(ii) of T.N.P.Act 1937.

5. It further comes to be seen from the detention order passed by the detaining authority, this Court is able to come across one serious anomaly viz., non-application of mind on the part of the detaining authority exhibited on the part of the sponsoring authority.

6. So far as the point regarding non-application of mind on the part of the detaining authority is concerned, in para.6 of the grounds of detention, it is stated by the detaining authority that there is an imminent possibility of the the detenu coming out on bail for the offences under Section 4(1)(a), 4(1)(aaa) r/w 4(1-A)(ii) of TNP Act, 1 937 by filing bail applications before the Court, which shows that there is non-application of mind on the part of the detaining authority in stating that there is imminent possibility of his coming out on bail. Therefore, there is no material on record to show that the detaining authority has independently applied his mind without taking into consideration the statement of the sponsoring authority, and hence, the order of detention gets vitiated.

7. This Court's attention is also drawn to a decision of the Apex Court rendered in Rivadeneyta Ricardo Agustin v. Govt. of Delhi reported in 1994 SCC (Cri) 354, wherein it is held therein:

"7. ....
8. The above statement merely speaks of a "possibility" of the detenu's release in case he moves a bail petition. It neither says that such release was likely or that it was imminent. Evidently, the statement falls short of the requirement enunciated by this Court in Kamarunnissa.
11. In these circumstances, we must hold that the principle enunciated by this Court in Kamarunnissa v. Union of India squarely applies and the order is liable to be quashed. It is accordingly quashed."
Falling in line with the above decision of the Apex Court, since the present case is on similar set of facts and circumstances, this Court has to pass its order in the following manner :-

In result,
(i) the above Habeas Corpus Petition is allowed;
(ii) the detention order dated 20.10.2003 made in C2/53962/2003 by the second respondent herein is quashed;
(iii) the detenu, viz., Thiru.Raja S/o Velu, is directed to be set at liberty forthwith unless his detention is required in any other case.

Index:Yes
Internet:Yes
gr.

To
1. The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai - 9.

2. The District Magistrate and District Collector,
Villupuram District.
3. The Superintendent, Central Prison, Cuddalore.
4. The Joint Secretary to Government, Public (Law & Order),
Fort St.George, Chennai-9.
5. The Public Prosecutor, High court, Madras.